

## **REMARKS**

### **Summary**

Claims 1-36 are pending in this application. Favorable reconsideration and allowance of the pending claims are requested.

### **Claim Rejections - 35 U.S.C. § 103**

#### **Claims 1-9 and 11-36**

Claims 1-9 and 11-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Publication No. 2004/0034760 to Paver (hereinafter "Paver") in view of United States Publication No. 2002/0040378 to Symes et al. (hereinafter "Symes"). Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the rejection.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Publication No. 2004/0034760 to Paver (hereinafter "Paver") in view of United States Publication No. 2002/0040378 to Symes et al. (hereinafter "Symes"), further in view of an alternative embodiment of Paver. Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the rejection.

Applicant respectfully submits herewith a Declaration under 37 C.F.R. § 1.132 that includes an unequivocal statement by the inventors common to the pending application and Paver that they both conceived and jointly invented the relevant subject matter that is both claimed in the pending application and common to Paver. As stated in MPEP 2136.05, "a 35 U.S.C. 102(e) rejection can be overcome by...submitting an affidavit or declaration under 37 CFR 1.132 establishing that the relevant disclosure is applicant's own work. *In re Mathews*, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969)."

"The fact that an application has named a different inventive entity than a patent does not necessarily make that patent prior art." *Applied Materials Inc. v. Gemini Research Corp.*, 835 F.2d 279, 15 USPQ2d 1816 (Fed. Cir. 1988). The issue turns on what the evidence of record shows as to who invented the subject matter. *In re Whittle*, 454 F.2d 1193, 1195, 172 USPQ 535, 537 (CCPA 1972). In fact, even if applicant's

work was publicly disclosed prior to his or her application, applicant's own work may not be used against him or her unless there is a time bar under 35 U.S.C. 102(b). *In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982) (citing *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982)). Therefore, when the unclaimed subject matter of a reference is applicant's own invention, applicant may overcome a *prima facie* case based on the U.S. patent application publication by showing that the disclosure is a description of applicant's own previous work.

Furthermore, when the reference reflects applicant's own work, applicant need not prove diligence or reduction to practice to establish that he or she invented the subject matter disclosed in the reference. A showing that the reference disclosure arose from applicant's work coupled with a showing of conception by the applicant before the filing date of the reference will overcome the 35 U.S.C. 102(e) reference in the rejection. The showing can be made by submission of an affidavit by the inventor under 37 CFR 1.132. The other patentees need not submit an affidavit disclaiming inventorship, but, if submitted, a disclaimer by all other patentees should be considered by the examiner. *In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982).

Based at least on the foregoing, Applicant submits that Paver is not available as prior art and that the rejections based on Paver are rendered moot and improper. Furthermore, Symes does not teach, suggest or disclose all the limitations taught in claims 1-36. Accordingly, Applicant respectfully requests withdrawal of the § 103(a) rejections of claims 1-36.

**Conclusion**

It is believed that claims 1-36 are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicants do not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the limitations of the independent claims and dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the Deposit Account No. 50-4238.

Respectfully submitted,

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/Rebecca M. Bachner/

Rebecca M. Bachner, Reg. No. 54,865  
Under 37 CFR 1.34(a)

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